

# INNOCENT SPOUSE

To better serve you, the Arizona Department of Revenue offers online assistance and filing of your business taxes. To file your taxes online or to register to use the website, go to [www.aztaxes.gov](http://www.aztaxes.gov).

This publication is intended to answer some of the most commonly asked questions concerning innocent spouse relief, separation of liability and equitable relief.

For complete details, refer to Arizona Revised Statutes. In case of inconsistency or omission in this publication, the language of the Arizona Revised Statutes will prevail.

## Important Change

A change in Arizona law made it easier to be relieved from liability of tax related to your spouse (or former spouse). You can now request innocent spouse relief for an understatement of tax no matter how small the amount. If you are divorced, separated, or no longer living with your spouse, you may request separation of liability between you and your spouse (or former spouse) for an understatement of tax on a joint return. Also, the department will consider your request for equitable relief in situations where it would be unfair to hold you liable for tax that should be paid only by your spouse (or former spouse).

The new law applies to any tax liability arising after August 6, 1999, or any tax liability that was unpaid as of that date.

## Introduction

Many married taxpayers choose to file a joint tax return. When a joint return is filed, both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if the other spouse earned all of the income.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

1. Innocent spouse relief.
2. Separation of liability.
3. Equitable relief.

Each type of relief has different requirements. They are explained separately in different parts of this publication. Read each part to see if you qualify for that type of relief.

## What this publication does not cover

This publication does not discuss filing an **injured spouse** claim. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied against your spouse's past-due state taxes, child support or spousal maintenance, or debts owed to another Arizona State agency. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For information concerning amounts held for past-due state taxes, call (602) 255-3381, or (800) 352-4090 toll free from area

codes 520 & 928. For information concerning amounts held to pay child support or spousal maintenance, contact the Arizona Department of Economic Security. For information about amounts held for another Arizona State agency, contact that agency.

## How to request relief

File Form 200, *Request for Innocent Spouse Relief and Separation of Liability and Equitable Relief*, to ask the department for the types of relief discussed in this publication. You need to file only one Form 200 even if you are requesting relief for more than one tax year.

The department must inform your spouse or former spouse if you request relief from joint and several liability.

The department will review your Form 200, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify.

## What is joint and several liability?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due.

## How can I get relief from joint and several liability?

Relief now falls into three categories: "innocent spouse relief," "separation of liability," and "equitable relief." Each of these types of relief have different requirements. They are explained separately as follows.

## What are the rules for innocent spouse relief?

To qualify for innocent spouse relief, you must meet **all** of the following conditions.

- You must have filed a joint return, which has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must establish that at the time you signed the joint return, you did not know, and had no reason to know, that there was an understatement of tax.
- Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

## What is an "understatement of tax"?

An understatement of tax is the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return. For example, you reported total tax on your 1996 return of \$2,500. The department determined in an audit of your 1996 return that the total tax should be \$3,000. You have a \$500 understatement of tax.

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## What are "erroneous items"?

Erroneous items are any deductions, credits, or bases that are incorrectly stated on the return and any income that is not reported on the return.

## Will I qualify for innocent spouse relief in all situations where there is an understatement of tax?

No. There are many situations in which you may owe tax that is related to your spouse, but not be eligible for innocent spouse relief. For example, you and your spouse file a joint return that reports \$10,000 of income and deductions, but you knew that your spouse was not reporting \$5,000 of dividends. You are not eligible for innocent spouse relief when you have knowledge of the understatement.

## What are the rules for separation of liability?

Under this type of relief, you divide (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return and meet **either** of the following requirements at the time you file Form 200.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 200.

## Why would a request for separation of liability be denied?

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

- You and your spouse transferred assets as part of a fraudulent scheme.
- At the time you signed your joint return, you had actual knowledge that any items giving rise to the deficiency and that can be allocated to your spouse were incorrect.
- You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax.

## What are the rules for equitable relief?

Equitable relief is available only if you meet **all** of the following conditions.

- You must have filed a joint return.
- You do not qualify for innocent spouse relief or separation of liability.
- The department determines that it is unfair to hold you liable for the understatement of tax, taking into account all the facts and circumstances.

**Note:** Unlike innocent spouse relief or separation of

liability, if you qualify for equitable relief, you can get relief from an understatement of tax or an underpayment of tax. An underpayment of tax is an amount properly shown on the return, but not paid.

## How do Arizona community property laws affect my ability to qualify for relief?

You must generally follow community property laws when filing a tax return if you are married. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse) for purposes of requesting any relief from liability.

## How do I request relief?

File Form 200, *Request for Innocent Spouse Relief and Separation of Liability and Equitable Relief*, to ask the department for relief. You need to file only one Form 200, even if you are requesting relief for more than one year.

## If I am denied innocent spouse relief, must I reapply if I believe I might qualify under one of the other two provisions?

No. The department automatically will consider whether any of the other provisions would apply.

## I applied for innocent spouse relief before the law changed (August 6, 1999) and have not received a determination. Do I need to reapply?

No. The department will consider your request under the new law as long as the liability was unpaid as of August 6, 1999. However, the department may need to request additional information from you.

## When should I file Form 200?

File Form 200 as soon as you become aware of an unpaid tax liability that you think your spouse (or former spouse) should pay. The following are some of the ways you may become aware of such a liability.

- The department has examined your tax return.
- The department sends you a notice.

## Where should I file Form 200?

Follow the instructions on Form 200.

## I am currently undergoing an examination of my return. How do I request innocent spouse relief?

File Form 200 with the employee assigned to examine your return.

## What if the department has levied my account for the tax liability, and I decide to request relief?

All collection activity is suspended from the date the department receives the request until the final determination is made.

This publication is available in an alternative format upon request.

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Three Types of Relief at a Glance			
Factors	Rules for Innocent Spouse Relief	Rules for Separation of Liability	Rules for Equitable Relief
<b>Type of Liability</b>	You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse.	You must have filed a joint return that has an understatement of tax due to an item of your spouse.	You must have filed a joint return that has either an understatement or an underpayment of tax.
<b>Marital Status</b>		You must be no longer married, legally separated, or have not lived with your spouse in the same house for an entire year before you file for relief.	
<b>Knowledge</b>	You must establish that at the time you signed the joint return you did not know and had no reason to know that there was an understatement of tax.	If you actually knew of the item giving rise to the understatement, then you are not entitled to make the election to the extent of the actual knowledge.	
<b>Other Qualifications</b>			You do not qualify for innocent spouse relief or separation of liability.
<b>Unfairness</b>	It must be unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.		It must be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances.